

United States Government

Department of Energy

Albuquerque Operations Office

Memorandum

DATE: November 5, 1997

REPLY TO: LPD:RED

SUBJECT: Indemnity Articles in Work For Others Agreements with Non-Federal Sponsors

TO: Warren D. Siemens, Director, Technology Transfer and Commercialization Center,
MS 1380, SNL
Charryl Berger, Director, Civilian and Industrial Technology Program Office, MS
C331, LANL
Steve W. Goodrum, Area Manager, AAO
David A Gurule, Area Manager, KCAO

After feedback from the contractors regarding problems associated with the use of the clause entitled "General Including Product Liability Indemnity" this office is suggesting the following changes to the guidelines regarding the use of indemnity clauses in the subject work-for-others agreements:

The following product liability indemnity article is to be used in all work-for-others agreements with non-Federal sponsors:

"Product Liability Indemnity - the Sponsor hereby agrees to indemnify and hold harmless the Contractor and the Government, their officers, agents, and employees, from any and all liability, claims or damages, including attorney fees and cost whatsoever, for injury to or death of persons, or damage to or destruction of property, as a result of or arising out of the making, using, or selling of a product, process, or service which was derived from the work performed under this Agreement by or on behalf of the Sponsor, its assignees or licensees, provided, however, that neither the Government nor the Contractor shall be considered assignees or licensees of the Sponsor as a result of reserved Government and Contractor rights."

Since neither the Contractor nor the Government have any control over the Sponsor's commercialization of the technology involved in the work-for-others agreement and since it is standard practice in the commercial world to purchase or maintain product liability insurance it is felt that the above clause is reasonable and should not contain exceptions without specific DOE approval.

The following article entitled "General Indemnity" will be utilized in addition to the product liability indemnity clause when 1) the Sponsor is providing material or

equipment to the DOE Contractor, or 2) sending its employees to the facility as a part of the Statement of Work, or 3) where the nature of the work increases the risk of personal injury, death, or property damage.

“General Indemnity - Except for any liability resulting from any negligent acts or omissions of the Contractor, the Sponsor hereby agrees to indemnify and hold harmless the Contractor and the Government, their officers, agents, and employees from any and all liability, claims or damages, including attorney fees and cost whatsoever, for injury to or death of persons, or damage to or destruction of property, arising out of the performance of the work under this agreement.”

Note when the Sponsor has directed the specific activities not normally performed by the Contractor be performed as part of the Statement of Work, the Contractor is expected to question whether the work should even be performed at its facility. Even if the Contractor determines that the work should be performed, the above general indemnity article should be used without the exception of negligence of the Contractor.

Again, any requests for deviation from the subject clauses should be accompanied by why the Contractor supports the deviation and how the interests of the Government are protected.



L. Douglas Rigdon
Director
Laboratory Programs Division

cc:

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